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Pro Querente

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION**

**MONTANA SHOOTING SPORTS
ASSOCIATION, SECOND
AMENDMENT FOUNDATION,
Inc., and GARY MARBUT,**

Plaintiffs,

v.

**ERIC H. HOLDER, JR.,
ATTORNEY GENERAL OF THE
UNITED STATES OF AMERICA,**

Defendant.

Cause No. **CV-09-147-M-DWM**

***PLAINTIFF'S OBJECTIONS TO
FINDINGS AND
RECOMMENDATIONS OF
MAGISTRATE JUDGE***

Plaintiffs Montana Shooting Sports Association, Second Amendment
Foundation, Inc., and Gary Marbut ("Plaintiffs"), by and through their

counsel of record, hereby submit, in accordance with 28 U.S.C. § 636(b) and FED. R. CIV. P. 72(b)(2), their objections to the Findings and Recommendations of Magistrate Judge entered on August 31, 2010. (Dkt. No. 103.)

OBJECTIONS

1. Plaintiffs object to the Magistrate Judge's finding that Defendant Eric H. Holder, Jr. ("Defendant") failed to waive sovereign immunity under the U.S. Administrative Procedures Act.
2. Plaintiffs object to the Magistrate Judge's finding that regardless of any waiver of sovereign immunity, Plaintiffs are not entitled to non-statutory review.
3. Plaintiffs object to the Magistrate Judge's finding that Plaintiffs lack standing on the basis of Defendants' threat of prosecution.
4. Plaintiffs object to the Magistrate Judge's finding that Plaintiffs lack standing on the basis that they have suffered no economic harm.
5. Plaintiffs object to the Magistrate Judge's finding that Plaintiffs lack organizational standing.
6. Plaintiffs object to the Magistrate Judge's finding that the Commerce Clause allows Congress to regulate purely intrastate activities

allowed under Montana law by the Montana Firearms Freedom Act and MONT. CODE ANN. §§ 30-20-104 *et. seq.*

7. Plaintiffs object to the Magistrate Judge's finding that the activities allowed under Montana law by the Montana Firearms Freedom Act and MONT. CODE ANN. §§ 30-20-104 *et. seq.*, are not protected under the Second Amendment of the U.S. Constitution.

8. Plaintiffs object to the Magistrate Judge's implicit finding that the activities allowed under Montana law by the Montana Firearms Freedom Act and MONT. CODE ANN. §§ 30-20-104 *et. seq.*, are not protected under the Ninth Amendment of the U.S. Constitution.

9. Plaintiffs object to the Magistrate Judge's finding that the activities allowed under Montana law by the Montana Firearms Freedom Act and MONT. CODE ANN. §§ 30-20-104 *et. seq.*, are not protected under the Tenth Amendment of the U.S. Constitution.

10. Plaintiffs object to the Magistrate Judge's recommendation that the Second Amended Complaint be dismissed for failure to state a claim.

11. Plaintiffs object to the Magistrate Judge's finding that the Second Amendment of the United States Constitution does not apply to this case because the issue is not plead in the Second Amended Complaint.

12. Plaintiffs object to the Magistrate Judge's failure to rule on the statutory issues raised by amicus Gun Owners of America (Dkt. No. 54) before ruling on the constitutional issue.

BASIS

The forgoing objections are all based on the arguments of Plaintiffs and the *amicus curiae*, as set forth in the briefs filed in opposition to Defendant's motion to dismiss (Dkt. Nos. 32, 34, 45, 47, 48, 51, 54, 58, 64, 71, 85 and 93), as well as those arguments stated orally at the July 15, 2010, hearing on the motion to dismiss. (*See*, Transcr. of Proceedings (Jul. 15, 2010) attached hereto as Exhibit A.) Such arguments are incorporated herein by this reference. In addition, the basis for the Second Amendment arguments made at hearing arose from the United States Supreme Court case of *McDonald v. City of Chicago*, ____ U.S. ____, ____ S.Ct. ____, 2010 WL 2555188 (U.S.), 78 USLW 4844 (June 28, 2010), decided at the end of June, 2010, and over a month after the Government's reply brief was filed on the issue. If the Second Amendment argument is to be rejected as unplead, the Court should grant leave to Plaintiffs to amend their pleadings to include the issue. Pursuant to Plaintiffs objections, they request review *de novo*. FED. R. CIV. P. 72(b)(3).

CONCLUSION

Plaintiffs respectfully request that their objections to the Magistrate Judge's Findings be sustained, the Recommendations of the Magistrate Judge be rejected, and Defendant's motion to dismiss be denied in its entirety.

Dated this 14th day of September, 2010.

Respectfully Submitted,
SULLIVAN, TABARACCI & RHOADES, P.C.

By: /s/ Quentin M. Rhoades
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CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of September, 2010, I served a true and correct copy of the foregoing on the following persons by the following means:

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